

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

Case No. 15-cv-324-C

**DR. RACHEL TUDOR'S MOTION FOR LEAVE TO FILE
SURREPLY TO EZRA YOUNG AND BRITTANY
NOVOTNY'S REPLY TO DR. TUDOR'S OPPOSITION
TO THEIR MOTION FOR FEES AND COSTS**

Dr. Rachel Tudor, pursuant to LCvR 7.1(i), respectfully requests that the Court grant leave to file a surreply to the reply by Ezra Young and Brittany Novotny to Defendants' and Plaintiff's Objections to Fees and Costs sought by Mr. Ezra Young and Ms. Brittany Novotny [Doc. 375].

In support Dr. Tudor states:

1. Local Rule of Civil Procedure 7.1.(i) permits the filing of reply briefs to respond to new matter raised in the response brief.

2. On October 22, 2019, Mr. Young and Ms. Novotny filed their reply to Defendants' and Plaintiff's Objections to Fees and Costs sought by Mr. Ezra Young and Ms. Brittany Novotny [Doc. 375].

3. Dr. Tudor seeks leave to file a surreply of four pages to address two new

arguments raised by Mr. Young and Ms. Novotny: 1) regarding the right of Mr. Young and Ms. Novotny to assert the provisions of a retainer agreement purporting to give them the unrestricted right to any and all attorney fees, and 2) regarding the right of Mr. Young and Ms. Novotny to file a self-serving email they sent to Dr. Tudor questioning her mental condition that unrelated to the question of breach of duty.

4. “[W]here a moving party advances in a reply new reasons and evidence in support of its motion. . . , the nonmoving party should be granted an opportunity to respond.” *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998); *Black v. TIC Inv. Corp.*, 900 F.2d 112, 116 (7th Cir. 1990); *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 229 F.R.D. 208, 210 (D.N.M. 2005).

5. In the event the court denies Dr. Tudor’s request to file a surreply, Dr. Tudor requests that the court disregard these new arguments and the evidence submitted thereunder contained in the reply as improper.

6. The reason courts do not consider new matters presented in a reply brief is because the opposing party has not had an opportunity to respond. (*See Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). “[T]o allow an appellant to raise new arguments at this juncture would be manifestly unfair to the appellee who, under our rules, has no opportunity for a written response.” *Headrick v. Rockwell Int’l Corp.*, 24 F.3d 1272, 1278 (10th Cir. 1994)(internal quotation marks and citations omitted).

7. Counsel for Dr. Tudor has contacted opposing counsel. Mr. Young communicated that he and Ms. Novotny object to the requested relief. Ms. Coffey advised that Defendant Southeastern Oklahoma State University do not object to the requested relief.

WHEREFORE, Dr. Tudor respectfully requests the Court grant leave to file a surreply within seven (7) days of the granting of this motion, or in the alternative, disregard all new matters, (including all declarations and other exhibits), improperly set forth in the Reply.

November 2, 2021

Respectfully submitted,

/s/ Jillian T. Weiss

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Dr Rachel Tudor

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2021, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record.

/s/Jillian T. Weiss

Jillian T. Weiss